

JPA File No.: 05-081

AG Contract No.: KR05-1308TRN

Mesa Project No.: 01-507-001

Project: US 60 Park and Ride-Maintenance

Section: Gilbert Road to Power Road

TRACS No.: N/A

Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into this date April 30th, 2007 pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MANAGER and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. In an effort to encourage alternative methods of public transportation, the State and the City desire to participate in establishing a Park and Ride facility within the State's rights of way, north of the US 60 and south of the State's drainage channel, between Superstition Springs Boulevard and Power Road, including the construction of a retaining and new fencing, as shown on Exhibit "A", attached hereto and made a part hereof, collectively herein referred to as the "Project". The State will provide a portion of the real property and the City will construct and maintain the facility and other amenities, all at the City's expense. The purpose of this Agreement is to outline each party's responsibility for permit application, construction, and operation and maintenance of the Project.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 28892
Filed with the Secretary of State
Date Filed: 4/30/07
Janice K. Shivers
Secretary of State
By: [Signature]

II. SCOPE OF WORK

1. The State shall:

a. Provide the City use of the real property as shown on Exhibit A, for as long as the property is utilized as a Park and Ride facility.

b. Review the development plans, specifications, engineering and such documents necessary to construction the Project. Provide comments to the City, as appropriate. Upon the State's concurrence of the documents; review and approval of the City's application to construct within State's rights of way, grant the City an Encroachment Permit to construct the Project.

c. Grant or confirm, per established procedures of the State's Phoenix District Permit Office, that the City has a valid annual citywide Encroachment Permit on file, for routine/normal maintenance, and emergency maintenance work provided by the City within the State's rights of way. Agree, any new construction or installation shall require a separate permit through the State's Phoenix District Permit Supervisor, as per the Phoenix District's established procedures.

d. Retain ownership of the real property.

e. Be responsible for all future graffiti control and removal on State's side of the retaining wall.

2. The City shall:

a. Prepare design plans, specifications and other such documents and services required for construction bidding and construction of the Project and submit same to the State for review and concurrence, at the stages established by the City. Upon receipt of the State's concurrence, be responsible for construction of the Project, at the City's expense.

b. Obtain an Encroachment Permit for construction of the Project through the State's Phoenix District Permits Office. Call for bids and award one (1) or more construction contracts for the Project, administer same and make all payments to the contractors. Be responsible for any contractor claims for extra compensation.

c. Obtain, per established procedures of the State's Phoenix District Permit Office, a valid annual citywide Encroachment Permit for routine/normal maintenance and operations, and emergency maintenance work provided by the City within the State's rights of way. Agree, any new construction or installation shall require a separate permit as per the Phoenix District's established procedures, of which may be obtained through the District Office referenced herein.

d. Be responsible for the operations and maintenance of the Project, which includes maintaining the structural integrity of the retaining wall and maintenance of the City's installed fences, and all costs associated with water and electrical power.

3. The Parties Agree:

a. Neither party may assign their rights and obligations under the Agreement without the prior written consent of the other and any attempt to assign without such prior written consent is hereby given to, an assignment made to a public entity who becomes a successor of the City in providing mass transit services to the public. Such public entity shall be bound by the terms and conditions of this Agreement.

b. If the City constructs or causes to be constructed a commercial enterprise that generates revenue that exceeds an amount necessary to defray the costs of construction and maintenance of the Park and Ride facility, the State will be entitled to forty-nine percent of the excess revenue, which percentage represents the State's contribution to the overall Project.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effective until completion as set forth in this Agreement. However, the City shall provide provisions for maintenance for the Park & Ride facility perpetually. This Agreement may be cancelled at any time prior to the award of the construction contract, upon a thirty-day (30) written notice to either party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall not be obligated to provide maintenance for the Park & Ride facility.

2. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, the construction of the Project contemplated, cost over-runs and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City contracts with its contractors. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save, hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or reasonable attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State or City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or City at the end of the period for which the funds are available. No liability shall accrue to the State or City in the event this provision is exercised, and the State and the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
Phone: (602) 712-7525
Fax: (602) 712-7424

CITY OF MESA
Attn: City Manager
P.O. Box 1466
Mesa, Arizona 85211-1466
Phone # (480) 644-3333
Fax # (480) 644-2175

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Amended Agreement the day and year first above written.

CITY OF MESA

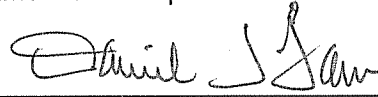
By


CHRISTOPHER J. BRADY
City Manager

STATE OF ARIZONA

Department of Transportation

By


DANIEL LANCE, P.E.
Deputy State Engineer, Valley Transportation

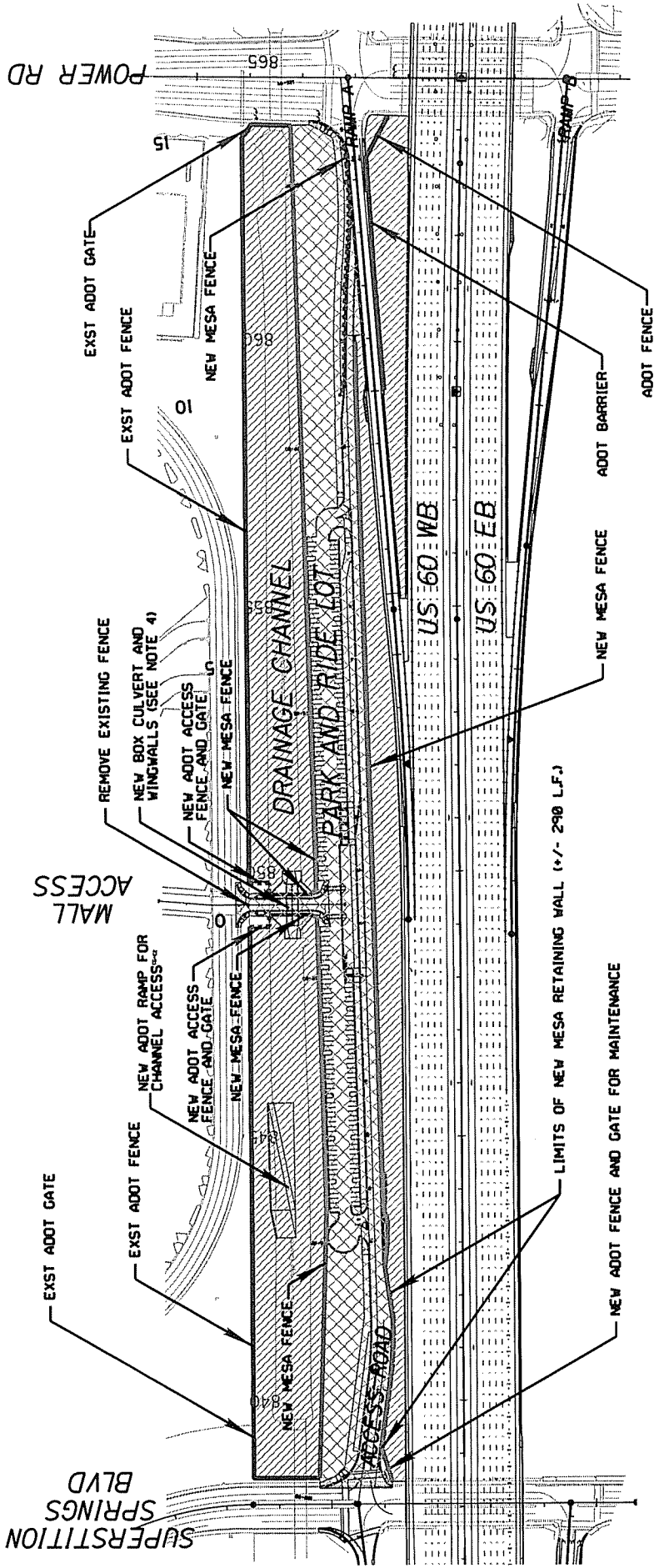
ATTEST:

By


BARBARA JONES
City Clerk



G: 05-081-Meas-Park & Ride
Final revision 12-19-05-LG
Mesa comments incorporated January 23, 2007-ly



NOTES:

1. MESA WILL MAINTAIN THE STRUCTURAL INTEGRITY OF THE RETAINING WALL
2. ADOT WILL BE RESPONSIBLE FOR GRAFFITI CONTROL ON THE ADOT SIDE OF THE RETAINING WALL
3. MESA WILL BE RESPONSIBLE FOR MAINTENANCE OF THE "NEW MESA FENCE"
4. ADOT WILL BE RESPONSIBLE FOR GRAFFITI AND CLEANING OF THE BOX CULVERT AND WINGWALLS. MESA WILL BE RESPONSIBLE FOR STRUCTURAL INTEGRITY OF THE BOX CULVERT AND WINGWALLS.
5. ADOT WILL BE RESPONSIBLE FOR MAINTENANCE OF THE "NEW ADOT FENCE AND GATES"

SYMBOL	MAINTENANCE RESPONSIBILITY	DESIGN	NAME	DATE	ARIZONA DEPARTMENT OF TRANSPORTATION INTERMODAL TRANSPORTATION DIVISION EXHIBIT A
		DRAWN	M. SANCHEZ	02/07	
			M. SANCHEZ	02/07	
		CHECKED	P. DICKMAN	02/07	
	ADOT to Maintain	PARSONS 4801 E. Washington Street Suite 250 Phoenix, Arizona 85034-2025			CITY OF MESA PARK AND RIDE EXHIBIT JPA NO. 05-081
	City of Mesa to Maintain	ROUTE US 60	LOCATION	US 60 - GILBERT RD TO POWER RD	

RESOLUTION NO. 8943

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF A PARK AND RIDE FACILITY NORTH OF THE SUPERSTITION FREEWAY AND SOUTH OF THE STATE'S DRAINAGE CHANNEL, BETWEEN SUPERSTITION SPRINGS BOULEVARD AND POWER RD

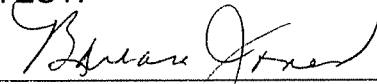
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the agreement between the State of Arizona Department of Transportation and the City of Mesa for the design, construction, operation and maintenance of a Park and Ride facility north of the Superstition Freeway and south of the State's drainage channel, between Superstition Springs Boulevard and Power Road; (ADOT JPA No. 05-081); is hereby approved.

Section 2: That the City Manager, Christopher J. Brady, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

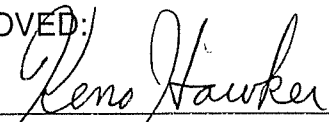
PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 2nd day of April, 2007.

ATTEST:



City Clerk

APPROVED:



Mayor



ATTORNEY APPROVAL FORM


FOR THE CITY OF MESA

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 4th day of April, 2007.



Attorney

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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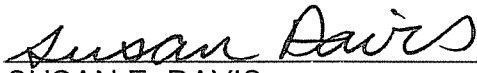
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-1308TRN (**JPA 05-081**), an Agreement between public agencies, i.e., The State of Arizona and The City of Mesa, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 17, 2007

TERRY GODDARD
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:1009314
Attachment